

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Health Care Committee

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BILL: CS/CS/SB 1766

SPONSOR: Health Care Committee, Education Committee, and Senator Crist

SUBJECT: School Students/Psychotropic Medication

DATE: April 27, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>deMarsh-Mathues</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Harkey</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill sets forth requirements for the provision of psychotropic medications to children in public schools. A public school may not deny any student access to programs or services because the parent of the student has refused to place the student on psychotropic medication.

The bill also clarifies that a public school teacher and school district personnel may share school-based observations of a student with a parent and may offer program options and other assistance to the parent, but they may not compel any specific action by the parent or require that a student take medication. A parent may refuse psychological screening of a student.

This bill creates s. 1006.0625, F.S.

## II. Present Situation:

### Individuals with Disabilities Education Act (IDEA)

Federal law requires states to make a free appropriate public education available to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.<sup>1</sup> Federal Child Find obligations require all children with disabilities residing in the state, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, to be identified, located, and evaluated. States must also ensure that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

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<sup>1</sup> 20 U.S.C. s. 1412. See also 34 CFR s. 300.121.

## **Exceptional Students in Florida**

Florida law (s. 1003.01(3)(a), F.S.) defines the term “exceptional student” as any student who has been determined eligible for a special program in accordance with State Board of Education (SBE) rule and includes students who are gifted and students with disabilities. The law further defines the term “exceptional students with disabilities.”<sup>2</sup> Gifted students are not considered a subset of students with disabilities.

The law defines special education services as specially designed instruction and such related services as are needed for an exceptional student to benefit from education, and may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braille, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other such services as approved by SBE rules.<sup>3</sup>

## **District School Boards**

Current law (s. 1001.42(4), F.S.) requires district school boards to provide for an appropriate program of special instruction, facilities, and services for exceptional students. The law (s. 1003.57(5), F.S.) prohibits a student from being given special instruction or services as an exceptional student until he or she has been properly evaluated, classified and placed in the manner prescribed by SBE rule. The parent of an exceptional student evaluated, placed, or denied placement must be notified of each evaluation, placement, or denial. In addition, parents must be notified of the right to a due process hearing. Parental consent is required for an initial evaluation and prior to the provision of special education or related services.

## **Children’s Mental Health**

Primary care physicians identify approximately 19 percent of the children they see as having behavioral and emotional problems.<sup>4</sup> According to research, a review of Medicaid prescription records (from unidentified states) during 1995 indicated that 150,000 preschoolers under the age of 6 were prescribed psychotropic medications.<sup>5</sup> Additionally, the 1999 MECA Study (Methodology for Epidemiology of Mental Disorders in Children and Adolescents) estimated that almost 21 percent of the children in the United States between the ages of 9 and 17 had a diagnosable mental or addictive disorder that caused impairment, and 11 percent of these

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<sup>2</sup> Exceptional students with disabilities (s. 1003.01(3)(a), F.S.) are those who are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through five years, or children, ages birth through two years, with established conditions that are identified in State Board of Education rules.

<sup>3</sup> s. 1003.01(3)(b), F.S.

<sup>4</sup> *President’s New Freedom Commission on Mental Health: Report to the President*, May 2003. p. 60.

<sup>5</sup> *Trends in the Prescribing of Psychotropic Medications to Preschoolers*, Zito, J.A., Safer, D.J., dosReis, S., Gardner, J.F., Boles, M., and Lynch, F., *The Journal of the American Medical Association*, Vol. 283, No.8, February 2000.

children (approximately 4 million) had a significant impairment that limited their ability to function.<sup>6</sup>

Schools are a major provider of services to children with mental health problems. “Many of these children...who do receive services are never seen by the health care system but receive care through schools (the principal provider of services to children with emotional disorders)...”<sup>7</sup> Schools provide many services, including psycho-social interventions, available in exceptional student education, as well as other support that is conducive to general good health, such as nutritious meals and perhaps the services of a school health clinic.

Primary care physicians often diagnose and treat mental health problems. Four times as many visits to a general practitioner involved a psychiatric diagnosis in 1999 than in 1985.<sup>8</sup> The number of such visits increased from 757,000 in 1985 to 3,217,000 in 1999. During that period, there was an expansion in the evidence base for the use of drugs in the treatment of mental health problems, and an accompanying growth in the number of children for whom psychotropic medication is prescribed.

A number of treatment options are available to address mental health problems in children including psychotropic medications. The National Institute of Mental Health reports that psychotropic medications, while generally not the first option, may be prescribed when the possible benefits of the medications outweigh the risk and, in particular, when psychosocial interventions are not effective by themselves and there are potentially serious negative consequences for the child.<sup>9</sup> There are several major categories of psychotropic medications: stimulants, antidepressants, anti-anxiety agents, anti-psychotics, and mood stabilizers. These medications may be used to treat a variety of symptoms, including as follows:

- Stimulant medications are frequently used for Attention Deficit Hyperactivity Disorder (ADHD), which is the most common behavioral disorder of childhood;
- Anti-depressants and anti-anxiety medications are frequently used for depression, anxiety, and obsessive compulsive disorders;
- Anti-psychotic medications are used to treat children with schizophrenia, bipolar disorders, autism, and severe conduct disorders; and
- Mood stabilizing medications are also used to treat bipolar disorders.<sup>10</sup>

Psychotropic medication is one of many treatment interventions that may be used to address mental health problems. Medication may be recommended and prescribed for children with mental, behavioral, or emotional symptoms when the potential benefits of treatment outweigh the risks.

It is estimated that 1.46 to 2.46 million children, or 3 to 5 percent of the student population, have ADHD.<sup>11</sup> The diagnostic methods, treatment options, and medications have become a very

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<sup>6</sup> U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General*. 1999. pp. 123-124.

<sup>7</sup> Glied, S. and Cuellar, A.E. “Trends and Issues in Child and Adolescent Mental Health.” *Health Affairs*. Vol. 22, No. 5. 2003. pp. 39-50.

<sup>8</sup> *Ibid.* p. 41.

<sup>9</sup> *Treatment of Children with Mental Disorders*, National Institute of Mental Health, updated June 18, 2001.

<sup>10</sup> *Ibid.*

controversial subject, particularly in education.<sup>12</sup> Concerns have been raised that school officials are reportedly offering their diagnosis of ADHD and urging parents to obtain drug treatment for the child.<sup>13</sup>

### **School District Personnel and Prescription Medication**

The U.S. Department of Education has clearly informed educators that medical professionals, not education professionals, are responsible for prescribing medication.<sup>14</sup> However, the role of educators in providing information about a student's behavior is recognized as an aid to making a diagnosis.

The 2004 reauthorization of IDEA (P.L. 108-446) requires each state to prohibit state and school district personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act,<sup>15</sup> as a condition of attending school, receiving services, or receiving an evaluation for a disability.<sup>16</sup> However, this prohibition does not prevent teachers or other school personnel from consulting or sharing classroom based observations with parents or guardians about a student's academic and functional performance, or behavior in the classroom or school, or the need for evaluation for special education or related services.

Chapter 458, F.S., governs the regulation of the practice of medicine by the Board of Medicine. Section 458.305, F.S., defines the "practice of medicine" to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition. The Board of Medicine within the Department of Health (DOH) regulates the practice of medical physicians. Chapter 459, F.S., the osteopathic medical practice act, similarly provides for the regulation of osteopathic physicians by the Board of Osteopathic Medicine in DOH. Section 459.003, F.S., defines the "practice of osteopathic medicine" to mean the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.

Section 456.065(2), F.S., specifies penalties for the unlicensed practice of a health care profession. Section 456.065(2)(a-c), F.S., provides administrative and civil penalties for unlicensed activity. Section 456.065(2)(d), F.S., provides criminal penalties in addition to the criminal violations and penalties listed in the individual health care practice acts.

There does not appear to be an exemption from these practice acts for school district personnel to require students to obtain a prescription to treat a medical condition to attend school. Consequently, school district personnel who attempt to implement such a policy may be subject

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<sup>11</sup> *Identifying and Treating Attention Deficit Hyperactivity Disorder: A Resource for School and Home*, U.S. Department of Education, 2003, p.2.

<sup>12</sup> *Identifying and Treating Attention Deficit Hyperactivity Disorder*, *Supra*, p. 1.

<sup>13</sup> Child Medication Safety Act of 2003, 108th Congress, House of Representatives Report, May 21, 2003, p. 5.

<sup>14</sup> Letter from Richard Riley of the U.S. Department of Education to Congressman Peter Hoekstra, November 21, 2000.

<sup>15</sup> 21 U.S.C. § 801

<sup>16</sup> 20 U.S.C. 1412

to criminal penalties prohibiting the unlicensed practice of medicine under the provisions of chapter 458, F.S., or chapter 459, F.S.

### **School District Authority to Administer Medication**

The administration of medication in schools is governed by s. 1006.062, F.S., and local school board policy. Section 1006.062, F.S., allows designated school personnel to assist in administering prescribed medication, provided that specific conditions are met, including the following provisions:

- School board policies and procedures for administering prescription medications and providing training by licensed health care professionals for school personnel to administer prescription medication.
- Written permission from parents for designated school district personnel to administer prescription medications. This must include an explanation of the necessity of the medication.
- Proper storage of medication in a secure location.

The law requires the principal or the principal's trained designee to assist the student in administering the medication.

### **III. Effect of Proposed Changes:**

The bill creates s. 1006.0625, F.S., to set forth requirements for the provision of psychotropic medications to children in public schools. A public school may not deny any student access to programs or services because the parent of the student has refused to place the student on psychotropic medication.

The bill also clarifies that a public school teacher and school district personnel may share school-based observations of a student with a parent and may offer program options and other assistance to the parent, but they may not compel any specific action by the parent or require that a student take medication. A parent may refuse psychological screening of a student.

The bill specifies that any medical decision made to address a student's needs is a matter between the student, the student's parent, and a competent health care professional chosen by the parent.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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